

☒ CHECK HERE IF ADDITIONAL PAGES ARE ADDED 7 PAGES



AGREEMENT NUMBER 96-27021	AMENDMENT NUMBER A06
REGISTRATION NUMBER:	

1. This Agreement is entered into between the State Agency and Contractor named below:
- | | |
|---|---|
| STATE AGENCY'S NAME
California Department of Health Services | (Also referred to as CDHS, DHS, or the State) |
| CONTRACTOR'S NAME
The MEDSTAT Group | (Also referred to as Contractor) |
2. The term of this Agreement is April 16, 1997 through April 17, 2006
3. The maximum amount of this Agreement is: \$ 63,403,853.16
Sixty Three Million Four Hundred Three Thousand Eight Hundred Fifty Three and Sixteen Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
- I. Amendment effective date: April 17, 2004
- II. Purpose of amendment: The parties wish to amend the Original Agreement to extend the term for twenty-four (24) months, add the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum to implement HIPAA requirements, and increase the total budget to compensate the Contractor for performing services for the additional period of time. DHS is obtaining more of the same services shown in the original agreement. In consideration of the covenants, conditions, agreements and stipulations in this Agreement, the parties mutually agree to amend the Original Agreement as follows:
- III. Changes made in this amendment are shown as: Text additions are displayed in **bold and underline**. Text deletions are displayed as strike through text (i.e., ~~Strike~~).
- IV. On the face of the original STD 2 is amended to read: 4/17/97 through ~~4/16/04~~ **4/16/06**. All references to the former contract term of 4/17/97 through 4/16/04 into this agreement is hereinafter deemed to read 4/17/97 through 4/16/06.
- V. On the face of the original STD 2 is increased by \$11,767,681 and is amended to read: ~~\$51,636,172.16 (Fifty One Million Six Hundred Thirty Six Thousand One Hundred Seventy Two and Sixteen Cents)~~ **\$63,403,853.16 (Sixty Three Million Four Hundred Three Thousand Eight Hundred Fifty Three and Sixteen Cents)**

(Continued on next page)

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) The MEDSTAT Group (Corporation)		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Carol Diephuis, Senior Vice-President		
ADDRESS 777 Eisenhower Parkway, Ann Arbor, MI 48108		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Health Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Edward Stahlberg, Chief, Program Support Branch		
ADDRESS 1501 Capitol Avenue, Room 71.2101, MS 1403, P.O. Box 997413 Sacramento, CA 95899-7413		

☐ Exempt per:

- VI. The second un-numbered paragraph on the face of the original Standard Agreement (STD 2) is amended to:
1. Add and incorporate by this reference the attached Rider L, entitled, "HIPAA Business Associate Addendum" consisting of 7 pages.
 2. Amend Rider E (Financial Schedules to add financial schedules for fiscal years 2003/2004, 2004/2005, and 2005/2006. Said added schedules, which are attached hereto, are hereby incorporated herein by this reference.
- VII. Subparagraph b. (Payment Provisions) of Paragraph 16 (Invoices and Payments) of the "State Model Purchase Contract General Terms and Conditions" section is amended to read as follows:

16. Invoices and Payments

b. Payment Provisions

Payment Provisions: The State shall pay the contractor for all Design, Development, and Implementation work performed under this contract after completion of each deliverable. All payments shall cover only work certified as complete by the contractor and verified by the State through acceptance testing and / or State staff certification.

The contractor shall invoice the Department for Software licenses only after successful installation and acceptance testing. Each Software product must be enumerated on Rider C and also on any invoice submitted.

The State will withhold payment for any service or product which has not completed acceptance testing, or which has not been successfully tested until such time as the product passes such tests. The State has the right to withhold any and all payments due under the contract to the extent of any amounts that are in dispute. Such disputes may include the contractor's failure to deliverable specific deliverables, software, or other specific services called for in this contract. Amounts due to the State as damages or deductions may be withheld by the State from any money payable to the contractor pursuant to the contract. The State shall notify the contractor in writing of any claim for liquidated damages or deductions pursuant to this provision at least 30 calendar days prior to the date the State withholds payment. Should approval subsequently be granted the State will reimburse the contractor for the amounts withheld.

Payment for professional services shall be separately enumerated and shall reflect the tasks as set forth in RIDER I and the costs attributable thereto. Invoices for professional services shall be included with the invoices for deliverables described above and are subject to the same deliverable completion requirements.

The contractor shall be paid for ongoing Professional and maintenance services in accordance with the unit costs enumerated on RIDERS F, G, H, and I. Such payments shall be made monthly at the close of the service month.

All invoices shall be submitted to the state's project director at the address below, for review and approval.

Department of Health Services, MIS/DSS ~~Procurement Project, 714 P Street, P.O. Box 942732, Sacramento, California 94234-7320.~~ **1615 Capital Ave., Ste. 73-446, MS 4300, PO Box 997413, Sacramento, California 95899-7413**

- VIII. Paragraph 19 (Confidentiality of Data) of the "State Model Purchase Contract General Terms and Conditions" section is amended to read as follows:

19. Confidentiality of Data

a. All financial, statistical, personal, technical and other data information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this agreement, or which become available to the Contractor in carrying out this agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of **administrative, physical and technical safeguards which are satisfactory** ~~the same or more effective procedural requirements as are applicable to the State.~~ The identification of all such confidential data and information as well as the State's **safeguards** ~~procedural requirements~~ for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the ~~protection~~ **safeguarding** of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall keep confidential and not disclose to anyone other than the State, without the State's written consent, the identity of any recipient or other individual for whom claims, eligibility, managed care and encounter, provider or other managed care plan data or

other information are submitted to the Contractor for use with the Software and other products and services delivered by the Contractor. The Contractor agrees to require its employees, agents and other representatives who have access to any claims data, databases and other information disclosed by the State to the Contractor to adhere to these confidentiality obligations. Subject to the aforementioned confidentiality constraints, the State acknowledges and agrees that during the term of this contract and thereafter, the Contractor is authorized to retain, use for its own purposes and disclose to any entity all aggregated claims/encounter data and other data disclosed by or on behalf of the State to it which is **de-identified according to the requirements of the HIPAA Privacy Rule at 45 CFR 164.514.** **The State shall agree to the methodology for assuring that all such data is de-identified.** In exchange for the contribution by the State of such data, the State shall be entitled to a waiver of the license fee for MarketScan normative data during the period of contribution. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which **the State makes** ~~is or becomes~~ publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this agreement, or is rightfully obtained from third parties **outside the scope of this agreement.**

State acknowledges and agrees that all Contractor products and Contractor services used or provided by Contractor under or in connection with this contract are proprietary to Contractor and title thereto shall remain the sole and exclusive property of Contractor. State shall keep all Contractor products and services confidential and shall not reproduce, duplicate, reveal, publish, transfer, or disclose any Contractor products or services to anyone other than its employees without Contractor's written consent. State agrees to require all its employees, agents, and other representatives, including any insurers, servicers, consultants or other parties who (after written consent from Contractor has been received) have ongoing or intermittent access to any Contractor products or services, to adhere to these confidentiality obligations. Upon termination of this contract for any reason, State shall return or cause to be returned to Contractor within 30 days any and all information, in whatever form, which is in its possession or control, or in the possession or control of any parties who may have been afforded access to any Contractor products or Contractor services, regarding or relating to any software, operating systems, analysis systems, programs, database systems, enhanced databases or documentation related to the Contractor products.

- IX. Paragraph 45 (Rights in Data) of the "State Model Purchase Contract General Terms and Conditions" section is amended to read as follows:

45. Rights in Data

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this agreement, or which became available to the Contractor in carrying out this agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of **administrative, physical, and technical safeguards which are satisfactory** ~~the same or more effective procedural requirements as are applicable to the State.~~ The identification of all such confidential data and information as well as the State's procedural requirements for **safeguarding** ~~protection of~~ such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall keep confidential and not disclose to anyone other than the State, without the State's written consent, the identity of any recipient or other individual for whom claims, eligibility, managed care and encounter, provider or other managed care plan data or other information submitted to the Contractor for use with the Software and other products and services delivered by the Contractor. The Contractor agrees to require its employees, agents and other representatives who have access to any claims data, databases and other information disclosed by the State to the Contractor to adhere to these confidentiality obligations. Subject to the aforementioned confidentiality constraints, the State acknowledges and agrees that during the term of this contract and thereafter, the Contractor is authorized to retain, use for its own purposes and disclose to any entity all aggregated claims/encounter data and other data disclosed by or on behalf of the State to it **which is de-identified according to the requirements of the HIPAA Privacy Rule at 45 CFR 164.514.** **The State shall agree to the methodology for assuring that all such data is de-identified.** In exchange for the contribution by the State of such data, the State shall be entitled to a waiver of the license fee for MarketScan normative data during the period of contribution. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which **the State makes** ~~is or becomes~~ publicly

available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this agreement, or is rightfully obtained from third parties **outside the scope of this agreement.**

- X. Paragraph 46 (Contract Extension(s)) of the State Model Purchase Contract General Terms and Conditions" section is amended to read as follows:

46. Contract Extension(s)

~~The state has the option to extend this contract for three years, through April 16, 2004. The state must notify contractor 90 days prior to the termination of the contract (or any extension thereof) of its intent to exercise this option. The **parties** state hereby **agree to** extends the current term of this contract from April 17, 2004 to April 16, 2004 **2006**, thus exercising the three-year option. Contractor waives the 90-day notice otherwise required for this extension.~~

- XI. Paragraphs 1.b., and 1.c. (Warranty) of Rider A – Special Provisions are amended to read as follows:

1. WARRANTY

- b. Contractor will furnish all maintenance service and parts for a period of April 17, 1997 through April 16, 2004 **2006**, beginning on the first day of the successful performance period, provided that such maintenance service or parts are not required because of accident, neglect, misuse, failure of electrical power or air conditioning, humidity control, or causes other than ordinary use. Any such service required as a result of erroneous site preparation specifications furnished by the Contractor (See General Terms and Conditions, Paragraph 5) or otherwise required due to the fault or negligence of the Contractor, shall be provided by the Contractor at no additional charge. All replaced parts shall become the property of the Contractor. Prior to the expiration of the warranty period, whenever equipment is shipped for mechanical replacement purposes, the Contractor shall bear all costs of such shipment including, but not limited to, costs of packing, transportation, rigging, drayage, and insurance. The warranty shall apply to the replacement machine beginning on the first day of the successful performance period for the replacement machine.
- c. For the time period April 17, 1997 through April 16, 2004 **2006**, beginning on the first day of the successful performance period, the Contractor warrants to the State that the machines are free from defects in material and

workmanship. Machines designated as newly manufactured may contain some used parts which are warranted equivalent to new in performance when used in these machines. Contractor's obligation with respect to defects in material and workmanship is limited to furnishing, on an exchange basis, replacements for machine or parts which have been reported by the State as having been, in its opinion, defective and are so found by the Contractor upon inspection.

XII. Paragraphs 11.a. (1) and 11.a. (2) of Rider F (Maintenance Provisions) is amended to read as follows:

a. Types of Service

(1) Category I Service-When Category I Service is specified, Contractor will provide a central service location which will accept documentation, in a format prescribed by Contractor, indicating that a problem is caused by a defect in the program. Contractor will respond to a defect in the current unaltered release of the program by issuing: defect correction information such as correction documentation, corrected code, or notice of availability of corrected code, or a restriction or a bypass. Unless Category 44 ~~I~~ service is also specified for the program, the State shall be responsible for the preparation and submission of documentation to the central service.

(2) Category 44 ~~I~~ Service-When Category 44 ~~I~~ Service is specified and a problem occurs which the State determines is caused by the use of a program and the diagnosis of the designated Contractor representative indicates the problem is caused by a defect in the unaltered portion of a current release of the program, the Contractor representative will perform the following problem resolution activities.

- XIII. The following provisions of Rider I (Personal Services) are amended as follows:

The maximum amount of this Rider shall not exceed ~~\$37,497,738.95~~ **\$45,759,210.95** consisting of ~~\$36,497,738.95~~ **\$44,159,210.95** for the fixed price tasks prescribed in this Proposal Request and ~~\$1,000,000~~ **\$1,600,000** set aside for payment of any unanticipated tasks specifically authorized under the provisions of Paragraph 7.

1. **General**

- a. The purpose of this Rider is to define certain tasks required to provide **support, maintenance and operations activities for the Department's** ~~1) a Management Information System; 2) a / Decision Support System; **the Department's** 3) a Relational Database Management System to support the MIS/DSS; and 4) a Test Laboratory~~ **the Department's Data warehouse**, establish the responsibilities for accomplishing these tasks, and prescribe the payment therefore. These tasks include those described in the Contractor's response to the RFP 96-25511.
- ~~C.~~ **b.** To the extent that additional work, not foreseen at the time this Agreement is executed, must be accomplished, Work Authorizations, as described in Paragraph ~~5~~ **7**, will be the means for defining and authorizing such work on a Labor Hour basis.

- XIV. Except as modified by this Agreement all other terms and conditions of the Original Agreement and all such prior amendments shall remain the same.

Amendment to Rider Effective 4/17/2004

Fiscal Year 2003/2004 Cost Schedule						
Deliverables	Software	Training	Personnel	Other Cost	Total	
Monthly On-Going Operations (4/17/04 - 6/30/04, billed monthly for prorated monthly portion)	\$247,366	\$34,944	\$787,429	\$78,049	\$1,147,789	
Total 2003/2004	\$247,366	\$34,944	\$787,429	\$78,049	\$1,147,789	

Fiscal Year 2004/2005 Cost Schedule						
Deliverables	Software	Training	Personnel	Other Cost	Total	
Monthly On-Going Operations (billed monthly for prorated monthly portion)	\$1,203,404	\$170,000	\$3,700,256	\$370,181	\$5,443,841	
On-Going Operations DB2 History Bases (billed monthly)			\$55,920	\$4,080	\$60,000	
On-Going Operations Panorama 48 Months (billed monthly)			\$27,960	\$2,040	\$30,000	
On-Going Operations Expand Briefing Book (billed monthly)			\$46,600	\$3,400	\$50,000	
Additional Rider I for Unanticipated Tasks			\$300,000		\$300,000	
Total 2004/2005	\$1,203,404	\$170,000	\$4,130,736	\$379,701	\$5,883,841	

Fiscal Year 2005/2006 Cost Schedule						
Deliverables	Software	Training	Personnel	Other Cost	Total	
Monthly On-Going Operations (billed monthly for prorated monthly portion)	\$956,037	\$135,056	\$2,939,648	\$294,088	\$4,324,829	
On-Going Operations DB2 History Bases (billed monthly)			\$44,425	\$3,241	\$47,666	
On-Going Operations Panorama 48 Months (billed monthly)			\$22,213	\$1,621	\$23,834	
On-Going Operations Expand Briefing Book (billed monthly)			\$37,021	\$2,701	\$39,722	
Additional Rider I for Unanticipated Tasks			\$300,000		\$300,000	
Turnover Work Plan	INCLUDED	INCLUDED	INCLUDED	INCLUDED	INCLUDED	
Total 2005/2006	\$956,037	\$135,056	\$3,343,307	\$301,651	\$4,736,051	
Contract Sub-Total 24 Month Extension (4/17/04 - 4/16/06)	\$2,406,807	\$340,000	\$8,261,472	\$759,401	\$11,767,681	

Contract Total for all years \$63,403,852.16* The total amount listed for on-going operations will be divided by the amount of months identified in Rider E for each Fiscal Year and billed monthly to the Department (prorated monthly amounts for FY's 2000/2001, 2003/2004, 2004/2005 and 2005/2006).

Rider L
HIPAA Business Associate Addendum

[Review [CMU Bulletin 03-05](#) regarding the applicability and use of this addendum. Content changes require email authorization from Roberta Ward of OLS. Unauthorized changes will result in contract or bid rejection. If this exhibit is needed in the resulting contract, include it in your bid document along with the other contract exhibits. Do not alter the text or font size in this document. Prior to finalizing your bid document, delete these colored instructions.]

1. Recitals

- A. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations:”).
- B. DHS wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
- C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. Under this Agreement, Contractor is the Business Associate of DHS and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS and uses or discloses PHI.
- E. DHS and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate.

- A. *Permitted Uses and Disclosures.* Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHS.
- B. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in this Addendum, Business Associate may:
 - (1) *Use and disclose for management and administration.* Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - (2) *Provision of Data Aggregation Services.* Use PHI to provide data aggregation services to DHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHS.

2. Responsibilities of Business Associate.

Business Associate agrees:

- A. *Nondisclosure.* Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and

the nature and scope of its activities. Business Associate will provide DHS with information concerning such safeguards as DHS may reasonably request from time to time.

- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- D. *Business Associate's Agents.* To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- E. *Availability of Information to DHS and Individuals.* To provide access as DHS may require, and in the time and manner designated by DHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS (or, as directed by DHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS health plans; or those records used to make decisions about individuals on behalf of DHS. Business Associate shall use the forms and processes developed by DHS for this purpose and shall respond to requests for access to records transmitted by DHS within 15 days of receipt of the request by producing the records or verifying that there are none.
- F. *Amendment of PHI.* To make any amendment(s) to PHI that DHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS.
- G. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS, or created or received by Business Associate on behalf of DHS, available to DHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS or by the Secretary, for purposes of determining DHS's compliance with the HIPAA regulations.
- H. *Documentation of Disclosures.* To document and make available to DHS or (at the direction of DHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.

- I. *Notification of Breach.* During the term of this Agreement, to notify DHS within twenty-four (24) hours during a work week upon the discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal and State laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach, or unauthorized use or disclosure of PHI, and provide a written report of the investigation to the DHS Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use at :

Privacy Officer
C/o Office of Legal Services
California Department of Health Services
P.O. Box 997413, MS 0011
Sacramento, CA 95899-7413

- J. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of DHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.

3. Obligations of DHS.

DHS agrees to:

- A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/hipaa>.
- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.* Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHS.

4. Audits, Inspection and Enforcement.

From time to time, DHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHS Privacy Officer in writing. The fact that DHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHS's:

- (a) Failure to detect or
- (b) Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices

constitute acceptance of such practice or a waiver of DHS's enforcement rights under this Agreement and this Addendum.

5. Termination.

- A. *Termination for Cause.* Upon DHS's knowledge of a material breach of this Addendum by Business Associate, DHS shall either:

- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS;
 - (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - (3) If neither cure nor termination are feasible, the DHS Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. Judicial or Administrative Proceedings.* DHS may terminate this Agreement, effective immediately, if (i) Business Associate is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Business Associate has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the Business Associate is a party.
- C. Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS (or created or received by Business Associate on behalf of DHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions.

- A. Disclaimer.* DHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS's request, Business Associate agrees to promptly enter into negotiations with DHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the

HIPAA regulations or other applicable laws. DHS may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHS pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- (1) Business Associate will notify DHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

- C. *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS at no cost to DHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.* The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. *Regulatory References.* A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.* The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.

- H. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.